

HILL LAW
PROPOSED FINDINGS AND CONDITIONS
GOODRIDGE BROOK 40B DECISION
May 30, 2019

I. NATURE OF THE APPLICATION & GOVERNING LAW

These applications have been filed under M.G.L. c.40B, §§20-23 (the "Act") and the regulations promulgated by the Department of Housing and Community Development ("DHCD"), 760 CMR 56.00 (the "regulations"). Lancaster does not presently meet the Statutory Minima as defined by 760 CMR 56.03(3). As a result, the Town's Zoning Bylaw and other bylaws and regulations may be waived upon a showing that they are not "consistent with local needs" within the meaning of the Act.

The question of whether a particular bylaw or regulation is "consistent with local needs" involves a balancing of (1) the Commonwealth's presumed need for Low and Moderate Income Housing in the Lancaster area and (2) "Local Concerns," which is defined as "the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces." 760 CMR 56.02.

II. JURISDICTIONAL ELEMENTS

Pursuant to the Act and the Regulations, 760 CMR 56.04(1), an applicant for a comprehensive permit must fulfill, at a minimum, three jurisdictional requirements to be eligible to submit an application to the ZBA. These are:

The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization;

The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and

The Applicant shall control the Property.

Pursuant to 760 CMR 56.04(1), compliance with these project eligibility requirements "shall be established by issuance of a written determination of Project Eligibility by the Subsidizing Agency that contains all the findings required under 760 CMR 56.04(4), based upon its initial review of the Project and the Applicant's qualifications in accordance with 760 CMR 56.04." The Applicant has submitted into the record two Project Eligibility Letters (one for each project) from MassHousing, dated March 28, 2018, that contains findings pursuant to 760 CMR 56.04(4).

However, the basis for the Applicant's site control was a Purchase and Sale Agreement between the seller, David Kilbourn, and the buyer, the Applicant, with a closing date of July 12, 2018. Under the terms of the P&S Agreement, that date could be extended for up to 240 days by

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the Applicant if permitting for the Project was incomplete. Assuming that the Applicant properly and timely exercised its option rights to extend the closing date, the last date on which the closing could have occurred was March 9, 2019 (240 days from July 12, 2018). The P&S Agreement provided that “time is of the essence,” meaning that the parties were strictly bound by the deadlines in the agreement. See, Owen v. Kessler, 56 Mass. App. Ct. 466, 469 (2002). Title to the Project Site had not passed to the Applicant by March 9th, and the Applicant had not provided any proof of a further agreement to extend the date between Mr. Kilbourn and the Applicant.

The Applicant subsequently produced a document that purported to be an “amendment” to the P&S Agreement, which was executed after March 9, 2019. Because the parties agreed that “time was of the essence,” once the extended closing date passed without a closing, the P&S Agreement expired by its own terms. The Amendment is dated April 8, 2019, a month after the expiration date of the P&S Agreement. Parties to a real estate contract may waive the “time is of the essence” condition in a contract by continuing to negotiate beyond the closing date, Maltais Enters., LLC v. Salt Marsh, LLC, 19 LCR 196 (2011), but that is not what happened here.

The Amendment was not signed by Mr. Kilbourn, but rather by his attorney. During the life of the P&S Agreement, Mr. Kilbourn’s attorney had the authority to execute amendments to extend contract deadlines (see, ¶18), but he did not have the authority to act on Mr. Kilbourn’s behalf after the P&S Agreement expired – when the P&S Agreement expired so too did any authorizations contained within the P&S Agreement.¹

Compounding this dilemma, Mr. Kilbourn died on April 8, 2019 at Clinton Hospital, the same day on which the Amendment was allegedly signed. This unfortunate event casts further doubt on the attorney’s authority or ability to act on Mr. Kilbourn’s behalf.

In sum, the problem with the Amendment is that it was executed after the P&S Agreement had already expired, and was not signed by Mr. Kilbourn but rather by his attorney, whose authority lapsed when the P&S Agreement expired. Title to the Project Site is now held by Mr. Kilbourn’s heirs, free, apparently, from any contractual obligation to sell to the Applicant (because the P&S Agreement’s closing date was not effectively extended). Absent evidence that the Applicant has a valid P&S Agreement with Mr. Kilbourn’s heirs, the Board is compelled to find that the Applicant does not have site control under 760 CMR 56.04(1).

^{1/} The Amendment references an email exchange “on or about March 12, 2019,” in which the parties’ attorneys allegedly discussed extending the closing date. Setting aside the oddity that the attorneys could not be more precise with the date of their email exchange, the exchange took place after the P&S Agreement expired, so that even if one were to suggest that the P&S Agreement was amended on March 12th, it was still after the P&S Agreement has already expired.

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III. FINDINGS

A. Sewer Connection

1. The Lancaster Sewer District Commission submitted a letter to the Board on May 24, 2019, advising that it could not issue a sewer connection permit for the Project. As a preliminary matter, there is a dispute as to whether the LSDC is a "local board" for purposes of Chapter 40B, and whether the Board should step into the shoes of the LSDC and decide to grant a sewer connection permit.

2. The LSDC's independence from the Town distinguishes this situation from the Supreme Judicial Court's decision in Dennis Housing Corp. v. Zoning Bd. of Appeals of Dennis, 439 Mass. 71 (2002). There, a local historic district committee was deemed to be a "local board" as defined under c. 40B, § 20 because members of the historic committee were initially appointed by the Town Board of Selectmen, who retained the right to fill vacancies or remove committee members for cause. Because the Dennis c. 40B project was within a historic district, the historic district committee would have to first issue a certificate of appropriateness before a building permit could be issued by the building inspector. "Local board" under c. 40B includes the "building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws". *Id.* at 79 (quoting G. L. c. 40B, § 20) (emphasis in original). The SJC held that since the building inspector possessed the authority to enforce municipal building laws like the certificate of appropriateness on behalf of the historic committee, it was a local board on whose behalf the ZBA could act:

It would be anomalous to hold that the zoning board's powers in the comprehensive permit scheme include the powers held by the building inspector in enforcing local requirements, but not the powers of the local agency for which the building inspector functions as enforcer. Where a town historic committee exercises a degree of "supervision of the construction of buildings," requiring that the exterior features of such buildings be "appropriate" to the historic district, and where the building inspector (expressly named in the definition of "local board") is the local official that operates to uphold and enforce the town historic committee's power of supervision, we are satisfied that a town historic committee comes within the definition of "local board." *Id.* at 79-80 (citing G.L. c. 40B § 20).

3. Here, unlike the local historic committee in the Dennis case, the LSDC is not appointed or supervised by the Board of Selectmen. Nor are its duties subordinate to any other town board, nor its decision appealable to the Board, as in Dennis. As its enabling legislation makes clear, the LSDC is an independent body that is not beholden to the Town or any of its municipal boards. By legislative enactment, the LSDC enjoys the power of eminent domain, can collect taxes and assessments, borrow money and issue bonds, hire staff, prescribe rules and regulations and, notably, make and sign contracts in its own name, and sue or be sued in its own

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name. Acts of 1967, c. 831, ss. 1, 4, 6, 8, 11, 12.

4. Because the LSDC is independent of the Town's government, the Board cannot act on its behalf under c. 40B.

5. Further, the Board cannot render a decision that is inconsistent with or interferes with the 2004 Administrative Consent Order ("ACO") between LSDC and the Massachusetts Department of Environmental Protection ("DEP"). The ACO is a contract that assigns certain rights, duties and privileges based on that contract. The ACO vests exclusive authority to the Commission to determine how to manage the sewer system in Lancaster, including whether and under what circumstances to apply to DEP for flow credits from a neighboring town. A breach of the ACO carries penalties including treble damages.

6. Chapter 40B authorizes the ZBA to act on behalf of other local, municipal boards on matters involving land use permits. It does not countenance the invasion of a private, contractual relationship. See Reynolds v. Zoning Bd. of Appeals of Stow, 88 Mass. App. Ct. 339, 350 (2015) (noting in reference to c. 40B that "The Act has no taking component within it.") (citing Zoning Bd. of Appeals of Groton v. Housing Appeals Comm., 451 Mass. 35, 40 (2008) ("The Act does not authorize the committee, directly or indirectly, to order the conveyance of an easement over land abutting the project site of a proposed affordable housing development.")).

7. The LSDC has advised the Board that it cannot issue a sewer connection permit for the Project, for multiple reasons. The Board considers the capacity issue of particular importance. The LSDC's consulting engineer, Weston & Sampson, advised the LSDC on May 22, 2019 that this Project would consume most if not all of the remaining sewer capacity available to the Town for discharge into the MWRA Clinton Wastewater Treatment Plant. In accordance with MWRA's requirements, the average daily flow from the District to the plant cannot exceed .37 million gallons per day (mgd). According to Weston & Sampson, the current average daily flow is approximately .292 mgd, leaving only 78,000 gallons per day in available capacity. According to Weston & Sampson, the District has already provided sewer betterments to approximately 52,700 gpd of flow, leaving approximately 25,300 gpd for this Project. However, if you apply the Title 5 flow rate of 110 gpd/bedroom to the Project's 378 proposed bedrooms, the "Goodridge Brook Estates would generate approximately 41,600 gpd of new wastewater." W&S Memo, p. 2. The Project would therefore exceed the maximum allowable average daily flow by 16,300 gpd.

8. The LSDC also commented that the Applicant has not demonstrated compliance with the infiltration/inflow remediation requirement under state regulations (314 CMR 12.04), and has provided inadequate or incomplete responses to engineering questions. The Applicant has also not provided a wastewater flow report that the LSDC requested.

9. The ability of the Project to even connect to the sewers that discharge at the MWRA Clinton WWTP was made possible only through a unique grant from the state's

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MassWorks infrastructure program. The Town received \$980,000 to extend the sewer system down Sterling Road for the express purpose of facilitating planned expansions of established industrial business on Sterling Road. These businesses then invested \$45,000 for the sewer expansion and quantified their projected job creation from the business expansions. Several of business, which are vital to Lancaster's economic growth and prosperity, have now put their expansions on hold due to the proposed Project, and some have informed the Board that they are considering moving their entire operations from the Sterling Road properties.

10. In light of the inherent incongruity of the Project's consumption of the remaining sewer capacity that was in part targeted for economic growth on Sterling Road, the Board will condition its approval of this Project by placing a cap on how much wastewater it can add to the Sterling Road sewer. Specifically, the Project must reduce its flows by 16,300 so that it does not cause the entire District to exceed its allowable limits to the MWRA Clinton WWTP, and it must further reduce its flows to ensure that the industrial users expansion plans, which was the predicate for the state grant that built this sewer, are not thwarted. Specifically, based on a flow rate of 110 gallons per day, per bedroom, the Project shall not exceed ___ bedrooms.

11. The Board will further condition its issuance of a comprehensive permit on the Project obtaining a sewer connection permit from the LSDC, and on the Project's sewer connection complying with all applicable LSDC regulations, policies (unless waived by the LSDC).

B. Environmental Impacts

12. The Project Site contains a significant wetland system, including an intermittent stream and associated bordering vegetated wetlands. In two environmental impact reports, filed on March 22, 2019 and April 11, 2019, the Applicant's wetland consultant opined that there were no vernal pools on the Site. In its April 11, 2019 report, the consultant stated that "there were no suitable conditions observed within any of the on-site wetlands that could support the breeding of vernal pool indicator species." The Applicant's consultant dismissed the opinions of the Town Conservation Agent and the wetlands scientist hired by the neighbors that the given the characteristics of the Site, vernal pool activity was likely.

13. The wetland consulting firm retained by the Board, Comprehensive Environmental, Inc. (CEI) inspected the Site and identified 19 spotted salamander egg masses within a 524-foot long portion of the intermittent stream, constituting the biological criteria necessary to establish a vernal pool. CEI confirmed on May 7, 2019, after consulting with staff at the state Division of Fisheries and Wildlife, Natural Heritage Program, that this portion of the stream is a certifiable vernal pool under state regulations, because it meets both the biological and physical criteria for a certifiable vernal pool. The Board should authorize CEI to submit the vernal pool certification form to Natural Heritage (NHESP), so this important resource can be protected under state law. As confirmed by NHESP, the owner's consent is not necessary for certification to occur.

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14. Under the Lancaster Wetlands Protection Bylaw, Chapter 215-2.A.(6) and (13), the 100-foot buffer zone around a vernal pool is protected, whether or not the vernal pool has been officially certified under state regulations. See Chapter 215-3 (definition of “Vernal Pool” applies “regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife”).

15. The Wetlands Bylaw prohibits work that could “alter” vernal pools, including activities that could result in: “[c]hanging of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics” of a vernal pool; “[d]rainage or other disturbance of water level or water table”; “discharging .. with any material which may degrade water quality”; and “[c]hanging temperature, biochemical oxygen demand or other physical, biological, or chemical characteristics of any waters.” See Chapter 215-3, “Alter,” B.-D., I.

16. The Conservation Commission noted on May 28, 2019 that the Wetland Bylaw’s 200-foot riverfront buffer zone provides important habitat protection for the wildlife that use the wetlands and, in this case, the vernal pool, for breeding. The Commission observed that the proposed plans indicate “intense development of the 200-foot riverfront area, with buildings, lawn and stormwater management infrastructure severely impacting not only the upland habitat for vernal pool species but very likely the vernal pool’s hydrology and water quality as well.”

17. For the Commission to allow work within the 200-foot riverfront buffer under the Wetlands Bylaw, the Applicant must meet an evidentiary burden. See, Bylaw, §215-6(F). The Applicant had an opportunity to present such evidence through the Environmental Impact Report, but chose not to. As such, the Board will deny the Applicant’s request for waiver from the provisions governing the 200-foot riverfront buffer.

18. Wetland and hydrology experts retained by the neighbors argued that the Project’s stormwater basins would violate the performance standards in the Bylaw, because outflow from the detention basins during storm events will increase post-development, and effluent from the stormwater basins will contain pollutants, including higher pH, salts, hydrocarbons and herbicides/pesticides that will impair, “if not destroy”, the habitat required for the vernal pool.

19. The Project also does not comply with the Massachusetts Department of Environmental Protection (“MassDEP”) requirements for vernal pools and stormwater management, which require a 100-foot buffer around certified vernal pools, and further protect vernal pools as Outstanding Resource Waters (“ORWs”). Under Massachusetts Stormwater Handbook Standard 6 (Table CA 2), (i) stormwater BMPs must be set back 100 feet from a certified vernal pool, (ii) applicants must “demonstrate that the stormwater BMPs meet the performance standard of having no adverse impact on the habitat functions of a certified vernal pool,” and (iii) stormwater discharges to ORWs must be set back from the receiving wetland and receive the highest and best practical method of treatment.

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20. There are three stormwater detention basins proposed to discharge runoff within the 100 of the stream/vernal pool. Both Mr. Garner and Mr. Horsley have opined that locating the proposed detention basins so close to the vernal pool will likely destroy the vernal pool and its habitat.

21. Mr. Horsley noted that wetlands are dependent upon both surface and ground water inputs and are sensitive to hydrologic shifts and alterations. As such, the state Stormwater Standards provide criteria to ensure that the hydrologic budget of associated wetlands is maintained. Standard No. 3 requires that post-development recharge of water approximate pre-development recharge, which provides baseflow to wetlands. The Applicant did not provide a water budget analysis, but its stormwater calculations reveal that, overall, recharge will increase by more than 50% compared to existing conditions. Mr. Horsley further opined that the construction of impervious surfaces near the center of the vernal pool will prevent groundwater recharge that currently provides baseflow to the vernal pool. Additionally, the proposed location of stormwater detention/infiltration basin 5 will raise water levels at the southerly point of outflow of the intermittent stream, which is likely to extend the time period where a surface water connection could be made between the vernal pool and the downstream portions of the stream that may be perennial. This could destroy the vernal pool and its habitat, because adding so much water in this area may change the stream conditions from intermittent (ie. capable of supporting a vernal pool) to one of constant flow that could allow fish into the vernal pool. This would threaten the vernal pool and its ability to function as safe habitat for reproduction of vernal pool species.

22. Both the State Division of Fisheries and Wildlife and the Nashua River Watershed Association wrote to the Board expressing their concerns that the Project would impact the coldwater fishery that is the Project's namesake, Goodridge Brook. The State commented that Goodridge Brook is "considered an exceptional wild trout stream that supports a very abundant population of native Eastern Brook Trout."

23. The state Appeals Court recently reaffirmed that while a zoning board can approve a Chapter 40B project conditioned upon submission of subsequent plans that comply with state law, "compliance with state standards... is not necessarily the end of the inquiry." Fish v. Accidental Auto Body, Inc., 2019 Mass. App. LEXIS 62, *14, quoting, Reynolds v. Zoning Bd. of Appeals of Stow, 88 Mass. App. Ct. 339, 348, 37 N.E.3d 656 (2015) ("The local board may justify denying a comprehensive permit by identifying a health concern that, among other things, is not adequately addressed by compliance with State standards."). Here, there is ample justification to require not just that the Project's stormwater design conform to the state Wetlands Protection Act and associated stormwater management standards, but also to the Town's Wetlands Bylaw. The discovery of an exceptionally large vernal pool in the middle of the Project Site by the Board's wetlands consultant – after the Applicant represented that the absence of vernal pools on the property – is a relevant factor militating against waiving the Wetlands Bylaw for this Project.

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C. Site Suitability and Compatibility with Adjacent Industrial Uses.

24. As noted above, the Site is located adjacent to the Town's industrial zoning district, and is proposing to tap into a sewer main that was constructed with a state grant, the purpose for which was to facilitate the expansion of the existing industrial facilities. Ironically, the Project's proposed consumption of over 41,000 gpd of the Town's limited sewer system capacity and connection into the industrial sewer pipe will thwart the very purpose of the sewer extension – the expansion of the Town's industrial economic base.

25. The Applicant's Environmental Analysis did not study the migration of air pollution or noise impacts from the adjacent Bestway lumber facility on Sterling Road onto the Project Site. The construction of the Project's roadways, drainage basins and buildings will require significant deforestation, which act as a natural buffer and absorbing feature for dust, emissions, and noise. While the elimination of the closest building to the Bestway site is an improvement, there will still likely be impacts on the remaining apartment buildings, and on the parking lot, the proposed recreational amenity for the apartment project, and children's bus stop serving the apartment building.

26. Given the nature of its industrial operations, Bestway is obligated to file a Tier II Emergency and Hazardous Chemical Inventory with US EPA. This is a regulatory requirement for large chemical users under EPCRA, the Emergency Planning and Community Right-to-Know Act of 1986, a United States federal law concerned with emergency response preparedness. In addition to EPCRA, Bestway's large volume of chemicals and pressure-treated lumber operation trigger a variety of federal compliance requirements, including the National Pollutant Discharge Elimination Systems Permit (NPDES).

Environmental justice is based on the principle that all people have a right to be protected from environmental hazards and to live in and enjoy a clean and healthful environment regardless of race, color, national origin, income, or English language proficiency. Environmental justice is the equal protection and meaningful involvement of all people and communities with respect to the development, implementation, and enforcement of energy, climate change, and environmental laws, regulations, and policies and the equitable distribution of energy and environmental benefits and burdens.

27. The State has an Environmental Justice policy ("EJ Policy") (https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf) that provides that "all people have a right to be protected from environmental hazards and to live in and enjoy a clean and healthful environment regardless of race, color, national origin, income, or

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English language proficiency.” The concept of environmental justice sprung from the concern that minority and low-income populations across the state were particularly and disproportionately exposed to toxic pollution from adjacent contaminated sites or active industrial land uses. While the traditional application of the EJ Policy is to discourage the siting of new industrial uses adjacent to existing low-income communities, this Project is grossly nonconforming to the EJ Policy in a different way, in that it would create a new, low-income housing community in close proximity to several existing noisome industrial land uses, and adjacent to one particular industrial operation that is unquestionably incompatible with residential uses.

IV. CONDITIONS

A. Wastewater

- A.1 The Project’s wastewater flow for purposes of predicting the Project’s impact on Lancaster’s remaining allotted sewer capacity at the MWRA Clinton WWTP shall be calculated based on Title V flow assumptions, specifically, 110 gallons per day per bedroom. According to the Town’s wastewater consultant, there is approximately 25,300 gpd in available capacity, after accounting for all of the capacity already allocated for properties that have been assessed betterments within the Sewer District. This excess capacity does not account for the future demand from expansion of the existing industrial facilities on Sterling Road, which was the anticipated and intended use of the new sewer main on Sterling Road. Since the Project’s projected flow is 41,600 gpd of new wastewater, the Project must reduce its flow volume and commensurate number of bedrooms so that it (1) does not exceed 25,300 gpd, and (2) accommodates the Sterling Road industrial expansion plans for which this sewer main was intended.
- A.2 The Project must comply with the Lancaster Sewer District Commission’s regulations, including but not limited to its infiltration/inflow remediation requirements, and must provide complete responses to the LSDC’s engineering questions.

B. Environmental Impacts

- B.1 The Project shall comply with all provisions of the Town’s Wetlands Bylaw. Specifically, there shall be no land disturbance within 100 feet of the vernal pool delineated by CEI on the Project Site. Further, since the Applicant has not demonstrated that the proposed construction will not “alter” the vernal pool, and

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has not presented any evidence to satisfy its burden under the Wetlands Bylaw, §215-6(F), there shall be no structures or stormwater management facilities within the 200-foot riverfront zone associated with the intermittent stream on the Site. The drainage basins shall be re-designed such that they do not discharge any water under any design storm event in the direction of the intermittent stream that contains the vernal pool.

- B.2 After modifying the Project design to conform to these conditions, the Applicant shall prepare a water budget analysis demonstrating that post-development recharge and runoff approximates pre-development conditions, such water quantity impacts on the downgradient wetland system are avoided to the most practical extent possible. No building permits shall issue until the water budget has been reviewed and approved by the Board as being in compliance with these conditions. Pursuant to DEP Stormwater Standard 6, the Applicant must also perform a habitat evaluation and demonstrate that the stormwater BMPs meet the performance standard of having no adverse impact on the habitat functions of a certified vernal pool. As requested by the Lancaster Conservation Commission, the Applicant should also conduct surveys for rare birds and wood turtles, and demonstrate that the proposed Project will have no significant adverse impact on these populations.
- B.3 Since the Applicant's Environmental Impact Report provided no analysis on the Project's impacts on the adjacent wetland resource areas, as was requested by the Conservation Commission, the requested waiver from the 25-foot no-alteration setback is denied. No land disturbance, including site grading, is allowed within 25 feet of any wetland resource area under the Bylaw of the Act.
- B.4 The Applicant shall complete the environmental analysis required of Subdivision Rules and Regulations, Section 301-8(D), supplementing the reports produced in March and April, 2019, including an analysis of the impacts of the Project (as conditioned herein) on the known vernal pool habitat, which was previously not disclosed, and to address the other deficiencies raised in the Conservation Commission's memorandum dated May 28, 2019.
- C. Site Suitability and Compatibility with Adjacent Industrial Uses.
 - C.1 There shall be no residential units and no ancillary or accessory residential uses (such as recreation), except for parking, on the west side of the intermittent stream.
 - C.2 The Applicant shall also prepare a Dust and Noise Mitigation and Monitoring Plan to collect baseline data for dust and noise impacts on the Project Site from the abutting Bestway property. The location of monitoring stations and the

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frequency of data collection shall be approved by the ZBA and its Consulting Engineer(s).

D. Stormwater Management System

- D.1 Stormwater shall be managed in accordance with the latest edition of the Massachusetts Stormwater Management Handbook and the accompanying technical guidance, as amended.
- D.2 All stormwater drainage basins shall be located so as to facilitate the maintenance and operation of the basins or drainage utility.
- D.3 The Applicant shall maintain and repair the drainage structures and stormwater management system within the Project until the Applicant either (1) conveys such obligations to the Town via an easement with acceptance of the same at Town Meeting as part of the public way acceptance process; or, (2) assigns or otherwise transfers these responsibilities to the successor homeowner association and/or to individual lot owners.
- D.4 The Applicant shall maintain and repair the drainage structures and stormwater management system within the Project until the Applicant assigns or otherwise transfers these responsibilities to the successor condominium association and/or to individual unit owners.
- D.5 Prior to Construction Activities, the Applicant shall provide fully engineered stormwater management plans and calculations, prepared and stamped by a Registered Professional Engineer, for review by the Consulting Engineer, to confirm consistency with DEP regulations and standard, and approval by the ZBA. The stormwater management system shall be designed to provide, in the opinion of the Consulting Engineer, sufficient means of artificially recharging precipitation to the groundwater to approximate recharge under existing natural conditions. Accordingly, prior to the issuance of any occupancy permits for the Project, the Applicant shall submit detailed calculations stamped by a registered Professional Engineer to the ZBA, to confirm the effectiveness and methodology of recharge, which shall be reviewed by the ZBA's Consulting Engineer at the expense of the Applicant. Upon the completion of the construction of 50% of the Units of the Project, the Applicant shall prepare a report which details, at a minimum, the constructed impervious area, a comparison to the proposed impervious area, the methodology of recharge, and an opinion by a registered Professional Engineer regarding compliance with this condition.
- D.6 Sodium Chloride is not to be used for de-icing and only Calcium Chloride or other more environmentally protective alternative shall be used for de-icing operations.

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Snow and ice from snow removal operations shall be carefully controlled onsite to assure that any snow removed from the parking and roadway areas shall be deposited in the areas shown as "Snow Storage Areas" on the approved snow storage plan. These restrictions and limitations shall be included in any maintenance contracts.

- D.7 Prior to starting any site work, the Applicant shall provide a copy of the final SWPPP and NPDES Construction General Permit to the Board. The SWPPP shall be provided to the contractors during construction and a copy must be kept on site during construction. The Applicant shall comply with the SWPPP during construction.